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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,171	11/17/2003	James J. Farrell	FRLL-710	4079

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STALLMAN & POLLOCK LLP
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EXAMINER

SOOHOO, TONY GLEN

ART UNIT PAPER NUMBER

1723

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,171

Applicant(s)

FARRELL, JAMES J.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. Claims 1-25 of this application conflict with claims 1-11, and 18-27, 32-36, 46 of Application No. 11/116,497. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-25 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-11, 18-27, 32-36, 46 of copending Application No. 11/116,497. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a mixer with splash shield and a nozzle and cleaning solution.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Election/Restrictions

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, 21-25, drawn to a mixer device with splash guard cleaning assembly and method of cleaning a splash guard upon a mixer device, classified in class 366, subclass 348 and 349.
 - II. Claim 18-20, drawn to a mixer device with a splash shield, classified in class 366, subclass 207.

The inventions are distinct, each from the other because of the following reasons:

5. Inventions Group I and Group I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other

combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the particulars of the mass of the splash shield as evidenced by claim 10 or claim 22. The subcombination has separate utility such as a cover to completely cover vessels.

6. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Kathleen Frost on 28, SEPT 2005 a provisional election was made WITHOUT traverse to prosecute the invention of Group I, a splash shield and cleaning assembly and method, claims 1-17, and . Affirmation of this election must be made by applicant in replying to this Office action. Claim 18-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Claims 1-17 and 21-25 are now presented for consideration and examination upon its merits.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 5-10, 21-22, and 23-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Nielson 5439289 (cited in PTO 1449) in view of Levine 4637221.

The Nielson reference discloses mixing machine of a known type as also pointed out in the preamble of the Jepson claims including a (Figure 10A) holder 201, for holding a vessel 14, an a rotatable mixing element 42, 44, driven by motor 86, 84 which is extendible into the mixing vessel 14 by movement of the holder 201, and whereby the improvement includes a splash shield lid cover 16, 18, 20.

The Nielson reference all of the recited subject matter as defined within the scope of the claims with the exception of having a nozzle and corresponding method whereby the nozzle is directed to rinse the splash shield lid cover 16.

The reference to Levine 4637221 (Levine) teaches a mixing device whereby there it includes a vertically movable vessel 21, a mixer element 26, 27, and an integrated automatic spray head 40 which may be used to spray and clean the surfaces of the mixer element and mixing vessel which has food debris such that it is ready for a subsequent use, see column 6, line 56 through column 7, line 7, so as to prevent any residual flavors from being blended.

In view of the teaching of Levine that one may provide an spray head for automatic rinsing/cleaning of the surfaces of the mixing device to remove residual food, or flavors, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the device and method of the Nielson reference with the additional step of providing a spray head directed any and all surfaces of the mixing chamber in which

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residual food may reside, including the lid 16 of Nielson, so that residual flavors are washed away and or sanitized.

With regards to method of rotating the lid during spray rinsing of the lid, it is deemed that it would have been obvious to one of ordinary skill in the art of cleaning to move the lid in any manner including rotation such that the spray impinges on all surfaces of the lids so that all of the residual food is rinsed.

With regards to the particular use of cleaning, rinsing or sanitizing fluid agents, such use of water, rinsing fluid, sanitizing solution, and quaternary ammonium sanitizer solutions are notoriously old and well known as a liquid agent to clean or rinse surfaces, thus, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the fluid used by the spray head with any commonly known cleansing solution so as to provide a more effective or cost effective removal of residual flavors or food debris.

With regards to the structure of the that lid 16 upon the shaft, absent any particular structural distinction in criticality to the perfection of the rinsing of the shield, such features is deemed immaterial to the invention defined by the scope of the claims as a method for rinsing a mixing machine. Furthermore, it is also noted that the lid has a mass and weight and it is deemed that the lid is fully capable of satisfying to perform the recited operation.

11. Claims 4, and 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielson 5439289 (cited in PTO 1449) in view of Levine 4637221 as applied to claims 3 and 10 respectively above, and further in view of Harr 1090148.

The Nielson 5439289 (cited in PTO 1449) in view of Levine 4637221 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the provision of the shield lid upon the mixing shaft in a disengagable manner upon an upward force upon the shield.

The reference to Harr teaches a shield lid 21 which is movable mounted upon a shaft by a spring 22 such that it may be disengaged from a lower position shaft member position in order to bias the lid.

In view of the teaching to Harr, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the lid coupling of the device and operation of the device lid of Nielson 5439289 (cited in PTO 1449) in view of Levine 4637221 with a mounting manner as taught by Harr such that the lid may be more positively seated upon the mixing vessel.

Conclusion

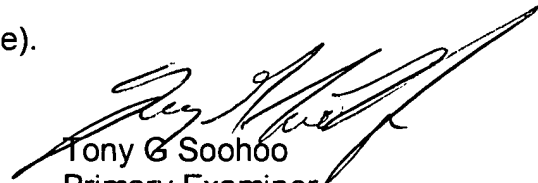
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Howlett discusses cleaning a lid after each use, page 2, column 1,. Sodeyama et al 6453803 teaches cleaning nozzle 68 in a mixer. Siegel 1496611 teaches a cover a vessel.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
Art Unit 1723
